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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

HAROLD TISCHLER,

Debtor

Chapter 7
Case No.: 1-15-44128 (CEC)

CHICAGO TITLE
INSURANCE COMPANY,

Plaintiff

v.

HAROLD TISCHLER

Defendant.

Adversary No.: 15-1194 (CEC)

DECLARATION OF BRIAN S. TRETTER IN SUPPORT OF MOTION

BRIAN S. TRETTER, hereby declares pursuant to 28 USC § 1746:

1. I am an attorney with Fidelity National Law Group, attorneys for Plaintiff Chicago Title Insurance Company ("Chicago Title") in the above-captioned action and, as such I am fully familiar with the facts giving rise to this action.

2. I submit this Declaration in support of Chicago Title's motion for an Order pursuant to Rule 7037 of the Federal Rules of Bankruptcy Procedure compelling defendant Harold Tischler ("Tischler") to respond to Plaintiff's duly served discovery demands by a date certain and for such other, further, and different relief as this court deems just, equitable and proper.

Relevant Factual and Procedural History

3. By way of brief background, this case involves a $650,000 loan obtained by Tischler secured by a mortgage on a certain parcel of real property commonly known as 4316 17th Avenue, Brooklyn, New York (the "Property"). On May 12, 2003, Tischler's sister, Jeanette Tischler ("Jeanette") as appointed guardian ad litem of Esther in an action in the Supreme Court of the State of New York, Kings County captioned *Esther Tischler v. Fahenstock & Co. and Kenneth Gold* bearing index number 11341/2003. Despite having no authority to do so because she was not Esther's guardian for any purpose other than the litigation, on or about January 13, 2004, Jeannette, purportedly acting as the guardian of Esther, executed a deed conveying the Property to the Debtor for no consideration.

4. After engaging in a number of no consideration conveyances back and forth to himself and to a limited liability company that he solely owned, on or about November 22, 2006, Tischler executed a promissory note (the "Note") and obtained a loan in the amount of $650,000 from Approved Funding Corp. As security for the loan, Tischler granted Approved Funding Corp. a mortgage on the Property (the "Insured Mortgage"). Had Tischler disclosed the fact that his alleged title to the Property was void because Jeanette had no authority to convey the Property to him, he never would have obtained the loan.

5. In 2011, Jerry Tischler, another sibling of the Debtor, commenced an action as the temporary guardian of Esther in the Supreme Court of the State of New York captioned *Esther Tischler v. Jeanette Tischler, et al.* under Index No. 6318/2011 (the "Litigation") seeking to void the conveyances of the Property and return title to the name of Esther and to cancel the Insured Mortgage as a lien on the Property. The Litigation was later consolidated with several related

cases under index number 100133/2004. Approved Funding and the Insured were named as defendants in the litigation. The Insured submitted a claim to Plaintiff under the Policy and Plaintiff undertook the defense of the Insured in the Litigation.

6. On November 22, 2011, Justice Yvonne Lewis, of the Kings County Supreme Court, cancelled the Insured Mortgage and voided the conveyances of the Property thereby restoring title to Esther. As a result, the Insured was deprived of its collateral. In order to adequately resolve the Insured's claim under the Policy, Plaintiff purchased the Note for $650,000.

7. Plaintiff is now the holder of the Note and is also subrogated to the rights of the Insured and Tischler is in default of his obligations under the Note because he has failed to make timely monthly payments.

8. Chicago Title filed this adversary proceeding on December 4, 2015. Doc. No. 1.

9. Despite being properly served with the summons and complaint, Tischler failed to timely answer (Doc. No. 4), and Plaintiff filed a motion for default judgment. Doc. No. 8.

10. On the return date of the motion for default judgment, Tischler appeared *pro se* and the Court gave him leave to file an answer to the Complaint. Docket Entry for March 3, 2016.

11. Rather than file an answer, Tischler, through counsel, filed an opposition to the motion for a default judgment. Doc. No. 10 and 11.

12. At the next pretrial conference held on April 19, 2016, the Court directed Tischler to file his answer, which he did on April 21, 2016. Doc. No. 14.

Tischler's Failure to Respond to Discovery

13. After many attempts to reach Tischler's counsel, the parties finally conducted a Rule 26(f) conference and agreed to a discovery schedule. Annexed hereto as **Exhibit A** is a true and correct copy of my May 26, 2016 e-mail to Tischler's counsel confirming our agreed to discovery schedule.

14. On June 14, 2016 another pretrial conference was held. Tischler's counsel failed to appear, but I informed the Court that we had agreed to a discovery schedule.

15. One day later, Tischler filed a motion to dismiss the adversary proceeding. Doc. Nos. 15-19.

16. On June 21, 2016, in accordance with our agreed to discovery schedule, I served Tischler's counsel with Chicago Title's interrogatories and request for documents. Annexed hereto as **Exhibits B and C** are Chicago Title's interrogatories and request for documents to Tischler. They were served via e-mail and via regular mail.

17. Tischler did not serve any discovery requests on Chicago Title.

18. On July 21, 2016, argument was held on Tischler's motion to dismiss. The Court denied the motion. Doc. No. 23. At the argument, I informed the Court that TIschler's discovery responses were due to be served on that day and asked counsel to represent that they would be so served.

19. Tischler's counsel informed both the Court and I that he would be responding by "sometime next week," or July 25-29.

20. No production was made.

21. On August 5, 2016, I sent an email to Tischler's counsel advising him that the discovery responses were now more than two weeks overdue. In an effort to resolve this discovery dispute in good faith, I asked for responses by August 8. A true and correct copy of my email to TIschler's counsel is annexed hereto as **Exhibit D**.

22. Rather than provide the requested responses, I received an email from Tischler's counsel stating that he intended to appeal the Court's order denying Tischler's motion to dismiss and seeking a stay of the proceeding pending the disposition of the appeal. Annexed hereto as **Exhibit E** is a true and correct copy of counsel's e-mail to me dated August 8, 2016.

23. Fed. R. Bankr. P. 7037 and Fed. R. Civ. P. 37(a) permit the Court to compel a party to respond to discovery. Tischler has failed to respond to any of Plaintiff's discovery demands and therefore, Chicago Title respectfully requests that the Court enter an order compelling proper responses to the outstanding discovery requests by a date certain.

CONCLUSION

24. For all of the reasons set forth herein, the instant application should be granted in all respects.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 2016

BRIAN S. TRETTER